

U.S. Department of Energy
Washington, D.C.

ORDER

DRAFT
DOE O 533.1X

Approved: XX-XX-06

This directive was reviewed and certified as current and necessary by Susan J. Grant, Chief Financial Officer, XX-XX-06.

**SUBJECT: COLLECTION FROM CURRENT AND FORMER EMPLOYEES FOR
INDEBTEDNESS TO THE UNITED STATES**

1. **OBJECTIVES.** To prescribe the policy and procedures for—
 - a. collecting debts owed by current and former Department of Energy (DOE) and National Nuclear Security Administration (NNSA) employees to the United States Government, subject to the limitations detailed in paragraph 6 below;
 - b. compromising, suspending, or terminating such debts; and
 - c. granting waiver of claims against employees resulting from erroneous payment of wages or allowances for travel, transportation and relocation expenses.
2. **CANCELLATION.** DOE 533.1, *Collection from Current and Former Employees for Indebtedness to the United States*, dated 9-26-03. Cancellation of a directive does not, by itself, modify or otherwise affect any contractual obligation to comply with such a directive. Canceled directives that are incorporated by reference in a contract remain in effect until the contract is modified to delete the reference to the requirements in the canceled directives.
3. **APPLICABILITY.**
 - a. **DOE Elements.** This Order applies to the DOE elements listed in Attachment 1 and automatically applies to elements created after it is issued.

The NNSA Administrator will assure that NNSA employees and contractors comply with their respective responsibilities under this Order.
 - b. **DOE Contractors.** This Order does not apply to site/facility management contracts.
 - c. **Exclusions.** None.
4. **REQUIREMENTS.**
 - a. It is Departmental policy to collect from current and former employees the amount of any indebtedness to the United States. In addition to the debt, DOE will assess and collect interest and penalty charges and associated

administrative costs as defined in Title 31 Code of Federal Regulations (CFR) 901.9 and 10 CFR 1015.

- b. As directed in Title 5 United States Code (U.S.C.) 5514, employees will be allowed—
 - (1) a minimum of 30 days written notice informing the employee of the nature and amount of the indebtedness, DOE's intention to initiate proceedings to collect the debt through deductions from pay, and an explanation of the individual's rights;
 - (2) an opportunity to inspect and copy Government records relating to the debt;
 - (3) an opportunity to enter into a written agreement with DOE under terms agreeable to the Chief Financial Officer (CFO) or field CFO or equivalent to establish a schedule for repayment; and
 - (4) an opportunity for a hearing on the DOE determination concerning the existence or the amount of the debt, and in the case of an individual whose repayment schedule is established by other than written agreement (paragraph 4c), concerning the terms of the repayment schedule.

5. RESPONSIBILITIES.

- a. Chief Financial Officer (CFO) will develop and maintain Departmental policies and procedures and delegations of authority to field CFO or equivalents for—
 - (1) collection of current and former DOE employees' indebtedness to the United States;
 - (2) compromise, suspension, or termination of collection actions involving employee debt under Federal Claims Collection Standards, 31 CFR 902 and 903; and
 - (3) waiver of erroneous payments of wages and allowances, and of travel, transportation and relocation expenses and allowances (5 U.S.C. 5584).
- b. CFO and Field CFOs or Equivalents.
 - (1) Determine the existence and amount of employee debt.
 - (2) Promote voluntary repayment of employee debts, whenever possible, using demand letters that comply with requirements listed in paragraph 7.

NOTE: One demand letter should suffice. An additional demand letter is optional.

- (3) Ensure that current and former employees are provided with due process procedures when amounts owed the Federal Government will be collected using salary offset under 5 U.S.C. 5514, or other administrative offset collections in accordance with the procedures outlined in paragraphs 7 through 15 of this Order.
- (4) Forward the employee's debt file to the General Counsel or Chief Counsel for a review if it is believed that an oral hearing is required to address issues of credibility or veracity.
- (5) Arrange for the services of a hearing official when a hearing is requested.

NOTE: The chairperson of the Board of Contract Appeals will designate a hearing official unless the chairperson determines that providing a hearing official would be inconsistent with other duties as defined in the Contract Disputes Act of 1978. The chairperson may designate a member (administrative judge) of the Board or other professionally qualified person who is not subject to the supervision or control of the Secretary.

- (6) To protect the Government's interest, be mindful of the 10-year statute of limitations for commencement of administrative offset action against a debtor [31 CFR 901.3(a)(4)].
- (7) Certify debt amounts collected as set forth in paragraph 12c.
- (8) Compromise, suspend, or terminate collection action on employee debts that do not exceed \$100,000 in accordance with 31 CFR 902 and 903.
- (9) Recommend compromise, suspension, or termination of collection action on employee debts that exceed \$100,000 to the Department of Justice (DOJ), in accordance with 31 CFR 904.
- (10) Act upon employee requests for waiver for collection of claims involving erroneous payments of wages/salary; travel, transportation and relocation expenses; and other allowances in accordance with 5 U.S.C. 5584. See paragraph 14.
- (11) Seek resolution for employees disputing the amount of retroactive collection of overpayments resulting from normal processing delay.
- (12) In coordination with the General Counsel or Chief Counsel and the Inspector General (IG) as directed in DOE O 221.11, *Reporting Fraud, Waste, and Abuse to the Office of the Inspector General*, dated 9-20-05, promptly refer claims for which there is indication of fraud, presentation of a false claim, or misrepresentation on the part of the debtor to the DOJ.

See 31 CFR 900.3, “Antitrust, fraud and tax and interagency claims excluded.”

(13) Respond to IG investigation findings as described in paragraph 15c.

- c. Headquarters General Counsel and Chief Counsels in the Field will review an employee’s debt file for legal sufficiency when requested by the CFO or field CFO or equivalent in anticipation of hearing or review.
- d. Inspector General will provide a report and supporting documentation for a claim resulting from an IG investigation of an employee to the CFO or field CFO or equivalent at the time the report is provided to the appropriate management official and/or employee. (See paragraph 15.)

6. LIMITATIONS.

- a. Excluded Debts or Claims. The procedures contained in this Order do not apply to—
 - (1) debts or claims arising under the Internal Revenue Code (26 U.S.C. 1 et seq.) or the Social Security Act (42 U.S.C. 301 et seq.), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c);
 - (2) claims under the tariff laws of the United States; or
 - (3) any case in which collection of a debt by administrative offset is explicitly provided for or prohibited by statute.
- b. Travel Advances and Employee Training Expenses. Authority to recoup travel advances and training expenses by administrative offset is provided by 5 U.S.C. 5705 and 5 U.S.C. 4108, respectively.
- c. Employee’s Election of Coverage or a Change in Coverage under a Federal Benefit Program and/or Administrative Pay or Allowance Adjustments.
 - (1) An employee’s coverage that requires periodic deductions from pay and that cannot be placed into effect immediately because of normal processing delays is not considered a debt under this Order if—
 - (a) the amount to be recovered was accumulated over 4 pay periods or less or
 - (b) the amount is \$50 or less.
 - (2) The employee’s future pay will be reduced to cover the period between the effective date of selecting or changing the coverage and the first regular withholding.

- (3) The employee may dispute the amount of retroactive collection by notifying the person responsible for resolving the disputed amount. See paragraph 5b(11).

d. Employee's Payment of Health Benefits Premiums for Periods of Non-Pay Status or Insufficient Pay.

- (1) The payroll office must be able to identify through timekeeping/payroll data all employees on leave without pay and employees with insufficient pay to cover premiums.

NOTE: Tracking such employees via Standard Form 50 is not reliable since one is not issued when an employee enters leave without pay status for less than 30 days or when an employee has insufficient pay.

- (2) As soon as the office becomes aware that premium payments cannot be withheld because the employee is on leave without pay or the employee's pay is insufficient to cover the premiums, the payroll office must provide the employee with written notice that adequately explains employees' options in accordance with 5 CFR 890.502.

- (3) The employee must—

- (a) submit in writing his or her decision to continue health benefits coverage

- (b) agree to pay the premium on a current basis or agree upon returning to work or when pay becomes sufficient to cover the premiums, that the payroll office will deduct in addition to the current pay period's premiums an amount equal to premiums for a pay period during the time when the employee was on leave without pay.

- (4) The payroll office will continue using this method to deduct the accrued unpaid premiums from salary until the debt is recovered in full.

- (5) If the debt cannot be recovered in full from salary, the payroll office may recover the debt from whatever other sources normally available for recovery of a debt to the United States [5 CFR 890.502(b)(2)].

7. DUE PROCESS PROCEDURES FOR SALARY OFFSET UNDER 5 U.S.C. 5514.

- a. An independent review will be performed by the appropriate finance office to determine whether an employee owes the Department for debts requiring repayment.

- b. If it is determined that the employee owes payment to DOE, the employee will be provided with prompt written notice of the indebtedness.
- c. A minimum of 30 calendar days from the date the demand letter is sent must be allowed prior to collection.
- d. A letter will be mailed to the employee's most recent address available to DOE.
- e. The letter will be sent certified delivery, return receipt requested, or by a commercial mail service that provides a return receipt, and the receipt will be retained as proof of delivery.
- f. The letter will state—
 - (1) That a debt is owed, including the origin, nature, and amount of the debt.
 - (2) Intention to collect the debt by means of deduction from the employee's current pay account.
 - (3) The amount, frequency, approximate beginning date, and duration of intended deductions.
 - (4) Requirements concerning interest, penalties, and administrative costs.
 - (5) The employee's right to inspect and copy Government records relating to the debt or if the employee or his or her representative cannot personally inspect the records, his or her right to request and receive a copy of records that form the basis for the debt determination.
 - (6) That amounts paid or deducted for the debt and later found not owed to DOE will be promptly refunded including interest or other charges collected from the employee. [NOTE: DOE has no authority to pay additional interest on the amount collected.]
 - (7) That upon petition for a hearing on or before the 15th day following receipt of the notice of indebtedness, the employee has the right to a hearing conducted by an official who is not under the control or supervision of the Secretary.
 - (8) That no later than 10 calendar days prior to the date of the oral hearing, the employee must provide to the CFO or for field employees, the field CFO or equivalent, information as outlined in paragraph 9f.
 - (9) That an employee has the right to be accompanied, represented, and advised by a representative of his or her choice at any stage of the proceedings.

- (10) That the timely filing of a petition for hearing will stay the commencement of collection proceedings, but failure to meet deadline dates could result in salary offset as defined in paragraph 10.
- (11) That, unless the hearing official grants the employee's request for a delay in the proceedings, a final decision on a requested hearing will be issued at the earliest practical date but no later than 60 days after the petition requesting the hearing was filed.
- (12) That the employee may establish a schedule for voluntary repayment of the debt or enter into a written agreement to establish a schedule for voluntary repayment in lieu of the offset.

NOTE: The agreed upon schedule must be submitted in writing, signed by both the employee and the designated DOE representative, and documented in DOE files [5 CFR 550.1104(d)(6)].

- (13) That any knowingly false or frivolous claim, statement, representation, or evidence may subject the employee to the following.
 - (a) Disciplinary procedures appropriate under title 5 U.S.C., chapter 75 and 5 CFR 752.
 - (b) Penalties under the False Claims Act, 31 U.S.C. 3729-3731.
 - (c) Criminal penalties under 18 U.S.C. 286, 1001, and 1002.
 - (d) Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801-09, 31 U.S.C. 3811-12, and 10 CFR 1013.

- g. That payment made under protest for all or any portion of the debt will not be considered a waiver of rights to inspect and copy Government records related to the debt determination and the right to a hearing.

8. EXCEPTION TO EMPLOYEE ENTITLEMENT TO NOTICE, HEARING, WRITTEN RESPONSES, AND FINAL DECISION. The requirements in paragraph 7 above do not apply to the following.

- a. Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four or fewer pay periods;
- b. A routine intra-agency pay adjustment made to correct an overpayment resulting from clerical or administrative error or delay in processing pay documents but only if the overpayment occurred within the four pay periods preceding the adjustment and if at the time of the adjustment (or as soon thereafter as practical),

the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting the adjustment; or

- c. Any adjustment to collect a debt of \$50 or less if at the time of the adjustment (or as soon thereafter as practical), the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

9. HEARING PROCEDURES UNDER 5 U.S.C. 5514.

a. Type of Hearing.

- (1) The CFO or for field employees, the field CFO or equivalent will make arrangements to provide the debtor with either an oral hearing or a review based on written submissions (also known as a paper hearing). See 31 CFR 901.3(e).
- (2) A hearing will be provided upon request when the debt will be involuntarily offset against the debtor's current pay account and DOE is the creditor agency.
- (3) The type of hearing will be one of the following.
 - (a) a review of the written records submitted, if the determination of indebtedness does not involve issues of credibility or veracity; or
 - (b) an oral hearing, if issues of credibility or veracity are involved.
- (4) An employee may waive his or her entitlement to an oral hearing and request a review of the case by the hearing official on the basis of written submission only. The debtor will then be accorded a paper hearing determination based on review of the written record.

b. Entitlement to a Hearing.

- (1) Upon request and under the circumstances set forth in paragraph 9a, an opportunity for a hearing will be provided to an employee to determine the existence or amount of the debt and/or a repayment schedule (if one has not been established by written agreement between the employee and the Department).
- (2) When a debt has been reduced to a judgment against the employee by a Federal court, the hearing will be limited to the nature of the repayment schedule, provided it was not established by written agreement between the employee and the Department or by a court order.

c. Petition for a Hearing.

- (1) An employee's written petition for a hearing must be submitted on or before the 15th day following receipt of the notice of indebtedness as described in paragraph 7g. Headquarters employees must address petitions to the CFO or a designee. Employees at field organizations must address petitions to the field CFO or equivalent. In the written petition, the employee must state why the Department's determination of either the existence or amount of the debt is believed to be in error.
- (2) The written petition must be signed by the employee and will describe as specifically and briefly as possible the facts, evidence, and testimony of prospective witnesses the employee believes can support his or her position. If an employee elects to waive an oral hearing, he or she will state specifically that the right to an oral hearing is waived and a hearing on the basis of written submission is elected.
- (3) Within 7 calendar days after timely receipt of a petition for hearing, the CFO or for field employees, the field CFO or equivalent, will forward to the employee and to the hearing official copies of the evidence and records that form the basis for the determination of indebtedness.

d. Petition for a Hearing Made After Time Expires. A petition for a hearing will be accepted after expiration of the 15-day time period, provided the employee shows, to the satisfaction of the CFO or field CFO or equivalent that the delay was caused by circumstances beyond his or her control.

e. Delay of Salary Offset. If an employee petition for a hearing is granted, action to begin recovery of the debt through salary deduction will be deferred until after a decision is rendered by the hearing official. However, DOE will continue to accrue interest, penalties, and administrative costs during the period collection activity is suspended. Upon completion of DOE review, interest, penalties, and administrative cost related to the portion of the debt found to be without merit will be waived. See paragraph 9n.

f. Pre-hearing Submissions for Oral Hearings.

- (1) Not later than 10 calendar days prior to the date of the oral hearing, the employee will file the following information with the CFO or for field employees the field CFO or equivalent and the hearing official.
 - (a) If the employee contests the Department's determination of the existence or amount of the debt, he or she will submit the following:

- 1 a statement listing the reasons for the disagreement including pertinent facts and arguments that support his or her assertion;
 - 2 a list of witnesses the employee will call at the hearing and a summary of their anticipated testimony; and
 - 3 a copy of the records that the employee intends to introduce at the hearing if they differ from the ones provided by the Department.
- (b) If the employee contests the Department's salary offset schedule, he or she will submit the following:
- 1 a proposed alternative salary offset schedule
 - 2 a statement of reasons why the proposed salary offset against disposable pay will produce an extreme financial hardship;
 - 3 supporting financial documents for the 1-year period preceding the notice for the employee and his or her spouse and dependents and for the repayment period proposed by the employee as an alternate salary offset schedule, including—
 - a income from all sources,
 - b assets,
 - c liabilities,
 - d number of dependents and dates of birth,
 - e expenses for food, housing, clothing, and transportation,
 - f medical expenses, and
 - g exceptional expenses, if any.
 - 4 a list of witnesses the employee intends to call at the hearing and a summary of their anticipated testimony; and
 - 5 a copy of the records that the employee intends to introduce at the hearing, if they differ from those in paragraph 9f(1)(b)3 above or from those provided by the Department.

- (2) Not later than 10 calendar days prior to the date of the oral hearing, the CFO or for field employees the field CFO or equivalent will provide the employee and the hearing official with—
 - (a) a list of witnesses that the Department intends to call at the hearing,
 - (b) a summary of their anticipated testimony, and
 - (c) additional evidence not previously transmitted to the employee that DOE believes is relevant and material.

g. Oral Hearing.

- (1) The hearing will be conducted by an official who is not under the control or supervision of the Secretary. An administrative law judge may be employed. See paragraph 9b.
- (2) The hearing will be scheduled no earlier than 30 days after the request for a hearing.
- (3) A summarized record of the hearing will be made.
- (4) All relevant evidence and material will be admissible; however, formal rules of evidence will not be employed.
- (5) Witnesses will testify under oath and are subject to cross-examination.
- (6) At the hearing, DOE bears the burden of first presenting evidence on relevant issues. The employee then presents his or her evidence regarding these issues. The DOE may offer evidence rebutting the evidence introduced by the employee. The employee, where appropriate, may offer evidence in surrebuttal to DOE.

h. Review Based on Written Submission for Paper Hearing.

- (1) When offset is expected from a current salary account, the review will be conducted by a hearing official who is not under the control or supervision of the Secretary. An administrative law judge may be employed for this purpose.
- (2) The date for written submissions will be set no earlier than 30 days after the request for paper review.
- (3) All relevant evidence and material will be admissible.
- (4) Testimony of witnesses will be by affidavit under oath or affirmation.

- (5) The hearing official will require that written materials be received on the date set for submission. Each party also will provide the opposite party with a copy of its submission at the same time as it is submitted to the hearing official.
- (6) Each party has 7 calendar days from the date of submission to file with the hearing official rebuttal evidence to the written submission.

i. Federal Rules of Civil Procedure.

- (1) Motion practice, written interrogatories, depositions, or petitions for extraordinary relief will not be permitted under this Order.
- (2) Federal rules of evidence are not permitted under this Order. Pre-hearing submissions for oral hearings will be limited to those described in paragraph 9f.

j. Representation.

- (1) An employee has the right to be accompanied, represented, and advised by a representative of his or her choice at any stage of the proceedings.
- (2) If the debtor chooses another DOE employee as a representative and that person is willing to serve, the representative's supervisor may disallow the employee's choice of representative on the basis of one of the following.
 - (a) Priority needs of the DOE mission. For instance, it is not intended that any one employee serve as a representative when doing so repeatedly would interfere with the priority needs of the DOE mission.
 - (b) Unreasonable cost to DOE.
 - (c) Conflict of interest or conflict of position.
- (3) The debtor may challenge a decision to disallow the choice of representative by forwarding the challenge to the representative's supervisor at the next higher level in the management chain, a supervisor who was not involved in the original decision to disallow the representative.
- (4) DOE will not designate a representative for an employee, nor will DOE require any employee or individual to serve as representative for another.
- (5) If a debtor requests assistance in obtaining representation, the servicing personnel office will make available to the debtor information concerning sources of assistance. All arrangements for a representative must be made by the debtor.

- (6) DOE will not compensate the debtor for representation expenses (e.g., hourly fees for attorneys or other representatives, travel expenses, reproduction of documents, or other related expenses).
- (7) DOE attorneys will not be provided as representatives for the debtor.

k. Use of Official Time.

- (1) An employee and the employee's representative (if employed by DOE) are entitled to a reasonable amount of official time to prepare for the hearing. The amount of official time is limited to time required to obtain information, interview witnesses not otherwise available during nonwork hours, and attend related formal meetings.
- (2) The employee and the representative (if employed by DOE) will be permitted official travel time to attend the hearing, and travel time will not be charged to leave.
- (3) In no case will the employee or representative be granted official time or official travel time except as provided in paragraphs 9k(1) and (2) above.

l. Applicable Legal Principles.

- (1) When the existence or amount of the debt is contested, a decision in favor of the Department will be issued by the hearing official if he or she finds that the Department has shown by a preponderance of the evidence the existence or amount of the debt.
- (2) If the hearing official finds that although a debt exists, DOE has failed to show by a preponderance of the evidence the amount of the debt, the hearing official will adjudge the amount of indebtedness as established by evidence presented at the hearing.
- (3) In deciding whether DOE's determination of the existence or amount of the employee's debt was established by a preponderance of the evidence, the hearing official is governed by Federal statutes and regulations giving rise to the debt and by other relevant law.
- (4) If the offset schedule is contested, the hearing official will uphold the original schedule unless the employee demonstrates by clear and convincing evidence that the payments called for in the offset schedule will produce extreme financial hardship.
- (5) If the hearing official finds that payments called for under the Department's offset schedule will produce an extreme financial hardship for the employee, the hearing official will establish an offset schedule that will result in the repayment of the debt in the shortest time possible without producing extreme financial hardship for the employee.

- (6) The hearing official's finding that the Department has failed to establish the existence or amount of the employee's debt by a preponderance of the evidence may not be based on State or local statutes of limitation.

m. Standards for Determining Extreme Financial Hardship.

- (1) An offset can be found to produce extreme financial hardship for an employee if the offset will prevent the employee from meeting the costs for the employee's and his or her spouse and dependents' essential subsistence expenses.
- (2) Essential subsistence expenses are limited to costs for food, housing, clothing, transportation, and medical care.
- (3) In determining whether an offset would prevent the employee from meeting essential subsistence expenses, the hearing official will consider—
 - (a) income from all sources of the employee or his or her spouse and dependents;
 - (b) the extent to which the assets of the employee and his or her spouse and dependents are available to meet the offset and the essential subsistence expenses;
 - (c) whether essential subsistence expenses have been minimized to the greatest extent possible;
 - (d) the extent to which the employee and his or her spouse and dependents can borrow and repay the money to meet the offset and other essential expenses; and
 - (e) the extent to which the employee and his or her spouse and dependents have exceptional expenses that should be taken into account and whether these expenses have been minimized.

n. Suspension of Collection Action and Waiver of Interest and Penalty Charges and Administrative Costs.

- (1) When a debtor requests an administrative review of the debt, DOE will continue to accrue interest, penalties, and administrative costs during the period when collection activity is suspended.
- (2) Upon completion of DOE's review, interest, penalties, and administrative costs related to the portion of the debt found to be without merit will be waived. See *DOE Accounting Handbook*, Chapter 8, "Receivables."

10. CONSEQUENCE OF THE EMPLOYEE'S FAILURE TO MEET DEADLINE DATES.

- a. An employee waives the right to a hearing or review by written submission and will have his or her disposable pay offset in accordance with the offset schedule if the he or she—
 - (1) fails to file a petition for a hearing before the established deadline date [paragraph 9c(1)];
 - (2) fails to appear at a scheduled hearing on time; or
 - (3) fails to file the required pre-hearing submissions (paragraph 9f).
- b. When the employee files the required pre-hearing submissions after the date established and the hearing official finds that the employee has shown good cause for failure to comply with the established deadline date, the hearing official may find that the employee has not waived the right to a hearing.

11. HEARING DECISION.

- a. The hearing official will notify the employee and the CFO or for field employees the field CFO or equivalent of the hearing decision in writing.
- b. The decision will be issued at the earliest practical date, but not later than 60 days after the employee files a petition requesting the hearing.
- c. The written decision will clearly outline the evidence regarding the nature and origin of the debt and the employee's case in rebuttal and will include analysis, findings, and conclusions of the hearing official on the existence and amount of the debt.
- d. If the hearing official determines that a debt is owed by the employee, deductions will begin by the method and in the amount stated in the notice of intent to collect from the employee's current pay, unless a different payment schedule is directed by the hearing official.
- e. The decision of the hearing official will be final and conclusive for purposes of salary offset under 5 U.S.C. 5514.
- f. Upon receipt of the hearing official's decision, the CFO or for field employees the field CFO or equivalent will take appropriate action to comply with the decision. However, the decision does not preclude the CFO or field CFO or equivalent from taking other collection action warranted under the circumstances, including (but not limited to) forwarding the case to the Department of the Treasury for further collection action in the Financial Management Service (FMS) cross-servicing program or to the DOJ.

12. RECOVERY PROCEDURES FOR SALARY OFFSET UNDER 5 U.S.C. 5514.a. Recovery from Employees Indebted to Another Agency or Department, by Virtue of Previous Employment.

- (1) Upon receiving the official personnel folder, a properly certified debt claim, and certification that due process procedures under 5 U.S.C. 5514 were performed, DOE will resume collection from the employee's current pay account and notify the employee and creditor agency of the resumption. In resuming collection, DOE will not repeat due process procedures described by 5 U.S.C. 5514.
- (2) The Department will return upon receipt any incomplete or improperly certified debt claim from another agency with a notice that procedures under 5 U.S.C. 5514 must be followed and a completed debt claim received before any action will be taken to collect from the employee's current pay.
- (3) The Department will provide the employee with a copy of the certified debt claim received from the creditor agency along with notice of intent to withhold payments and reimburse the creditor agency. Deductions should be scheduled to begin at the next officially established pay period.

b. Recovery from Employee Indebtedness to a Creditor Agency.

- (1) An employee who has been identified as a delinquent debtor and has received a notice from a creditor agency, he or she has 30 days to request a hearing, voluntarily pay the debt, establish a payment schedule, or make other workable arrangements to pay the debt.

NOTE: Notification from the creditor agency will include instructions regarding the debtor's rights, appeal procedures, and expected repayment requirements.

- (2) If the employee does not arrange to pay the debt, the creditor agency will send a notice to DOE to make a salary offset.
- (3) When salary offset notices are received, DOE will verify that the employee is still employed and process the notice as required by 5 CFR 550.1101-1110.
- (4) DOE payroll offices will notify employees in writing before withholding monies from their salaries.
- (5) The amount deducted for any period must not exceed 15 percent of disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount [5 CFR 550.1104(i)]. DOE should initiate offset in the pay period following

receipt of the creditor agency request but no later than 30 days after receipt.

- (6) DOE will not assess additional interest, penalty, or administrative charges on debts owed to other Federal agencies.
- (7) DOE will report promptly to the creditor agency that offset will be initiated and will include the date or pay period when the offset will begin.
- (8) Where available, the Intra-Governmental Payment and Collection System (IPAC) must be used to transfer payments.
- (9) When reimbursement is made to a creditor agency, DOE must indicate in IPAC or on the check—
 - (a) that the payment is for salary offset,
 - (b) the offset amount for each employee/debtor,
 - (c) the creditor agency's claim number,
 - (d) the employee's name and Social Security number, and
 - (e) date of payment.
- (10) DOE will notify the creditor agency of the employee's pending termination or reassignment that will affect offset arrangements for payment of the debt immediately .

c. Recovery of Debts Owed to another Agency by a DOE Employee Subsequently Transferred or Separated or in the Process of Transferring or Separating.

- (1) If after the creditor agency or department has submitted the debt claim and before the debt is collected in full, the employee transfers to a position served by a different paying agency, the total amount of collection made on the debt must be certified by the CFO or for field employees the field CFO or equivalent and a copy of the certification furnished to both the employee and the creditor agency together with notice of the employee's transfer.
- (2) The original debt claim and a copy of the certification of the amount that has been collected must be inserted in the employee's official personnel folder, which is provided to the new paying agency.
- (3) If the employee is in the process of separating or is being terminated from Government employment, offset will be made from the final salary payment, lump sum leave, or other severance payments to the employee to the extent necessary to liquidate the debt. The total amount of collection

will be certified and notification sent to the creditor agency and the employee.

- (4) When offset from final pay or other payments is insufficient to liquidate the debt and the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employees Retirement System, or other similar payments, a copy of the debt claim and certification should be sent to the agency responsible for making such payments as notice that a debt is outstanding.

13. GUIDELINES FOR COLLECTION OF DEBT.

a. Collection of Principal Debt, Interest and Penalty, and Administrative Costs.

- (1) The Department will assess and collect the principal amount of the debt and all associated interest and penalty charges and administrative costs.
- (2) Interest will be waived if the debt is paid within 30 days after the date of the initial demand.
- (3) Interest is charged at the rate of simple interest in effect at the time the debt becomes overdue (unless a different rate is prescribed in a repayment schedule). The interest rate remains fixed for the duration of the indebtedness [31 CFR 901.9(3)]. The CVFR is available on the Treasury website at www.fms.treas.com. Treasury also provides a recorded message with the current rate at 202-874-6995, accessible 24 hours a day. DOE may assess a higher interest rate if it is reasonably determined that a higher rate is necessary to protect the interests of the United States. The reasons for a higher rate must be documented.
- (4) Other waivers of interest, penalty charges, and administrative costs will be granted in accordance with applicable provisions of the DOE Accounting Handbook, Chapter 8, "Receivables."

NOTE: The Department prefers to collect such debts with a single voluntary payment.

- (5) Administrative costs include fees paid by a federal agency to another federal agency or to a private collection contractor for debt collection services when those fees are paid from amounts collected from the debtor (e.g., fee charged by Treasury and DOJ in the collection of a debt). Such fees, which are referred to as "contingency fees," must be added to the debt as an administrative cost to the Government, except as otherwise provided by law.

- (6) If a current or former employee is financially unable to pay in a single payment, collection may be accepted in regular installments through payroll deduction.
- (7) When a debt is paid in partial or installment payments, amounts received by DOE will be applied first to contingency fees, second to outstanding penalties, third to administrative charges other than contingency fees, fourth to interest, and last to principal.
- (8) Collection also may be made by involuntary salary offset or other administrative offset in accordance with this Order and as is consistent with applicable law.

b. Installment Deductions or Payments.

- (1) Whenever feasible, DOE will collect the total amount of a debt in one lump sum.
- (2) If a debtor is financially unable to pay a debt in one lump sum, DOE may accept payment in regular installments.
 - (a) From debtors who represent that they are unable to pay in one lump sum, DOE should obtain a current financial statement showing the debtor's assets, liabilities, income, and expenses and independently verify such representations whenever possible.
 - (b) DOE may also obtain credit reports or other financial information to assess installment requests.
 - (c) DOE may use its own financial information form or a DOJ form, such as the Financial Statement of Debtor (OBD-500).
 - (d) After reaching an agreement to accept payments in regular installments, DOE should obtain from the debtor a legally enforceable, written agreement that specifies terms of the arrangement and contains a provision accelerating the debt in the event of default.
- (3) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay.
- (4) If possible, installment payments should be sufficient in size and frequency to liquidate the debt in 3 years or less.
- (5) Security for deferred payments should be obtained as appropriate.

- (6) DOE may accept installment payments notwithstanding the debtor's refusal to execute a written agreement or to give security.
 - (7) For additional information on installment payments, see *DOE Accounting Handbook, Chapter 8*.
 - c. Separating and Separated Employees. If an employee is resigning, retiring, or being terminated, offset will be made from any entitlements (e.g., lump sum leave or final salary payment) on the date of separation to the extent necessary to liquidate the debt. If the debt cannot be liquidated by offset from final payment due the employee on the date of separation, DOE will immediately transfer the debt to Treasury cross-servicing program for additional action. Refer to the *DOE Accounting Handbook, Chapter 8* for additional information.
 - d. Long Outstanding Debts. Generally, write-off is mandatory for delinquent debts older than 2 years unless continued collection is documented and justified to the Office of Management and Budget (OMB) in consultation with Treasury. See OMB Circular A-129 (Revised) and the *DOE Accounting Handbook, Chapter 8*.
- 14. REQUESTS FOR WAIVER OF COLLECTION OF CLAIMS FOR ERRONEOUS PAYMENTS.
 - a. General.
 - (1) The waiver of claims arising out of an erroneous payment of pay and allowances; travel, transportation, and relocation expenses; and other allowances is governed by the standards set forth in 5 U.S.C. 5584.
 - (2) The General Accounting Office Act of 1996 (P.L. 104-316), Title I, Sec. 103(d) as amended, transferred authority to waive claims for erroneous payments exceeding \$1,500 from the Comptroller General of the United States to the OMB, which redelegated waiver authority to the executive agency that made the erroneous payment.)
 - (3) The authority to waive claims not exceeding \$1,500, which was vested in the head of each agency prior to the enactment of PL 104-316, was unaffected by the General Accounting Office Act.
 - (4) The Secretary of Energy has delegated this authority to the CFO.
 - (5) The CFO or field CFO or equivalent may waive claims in accordance with paragraphs 14c and d below.
 - b. Submission.
 - (1) For Headquarters employees, requests for waiver must be submitted to the CFO or a designee, through the Energy Finance and Accounting Service Center.

- (2) For field employees [except employees of the Bonneville Power Administration (BPA)], waiver requests should be submitted to the field CFO or equivalent through the Capital Accounting Center.
 - (3) Field employee waiver requests for transportation, travel, or relocation should be submitted to the field CFO or equivalent.
 - (4) BPA employees will submit requests for waiver to the Administrator, BPA, or a designee.
- c. Statute of Limitations. A waiver request must be received in the Office of the CFO or field CFO within 3 years immediately following the date on which the erroneous payment was discovered. The claimant is responsible for proving that the claim was filed within the applicable statute of limitations.
- d. Guidelines for Granting Requests.
 - (1) A waiver will **not** be granted if the deciding official finds indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. There are no exceptions to this rule for financial hardship or otherwise.
 - (a) Fault exists if in light of all the circumstances, it is determined that the employee knew or should have known that an error existed but failed to take action to have it corrected.
 - (b) Fault can derive from an act or a failure to act.
 - (c) Unlike fraud, fault does not require a deliberate intent to deceive.
 - (d) Whether an employee should have known about an error in pay is determined from the perspective of a reasonable person.
 - (e) Any significant unexplained increase in an employee's pay and/or allowances, which would require a reasonable person to make inquiry concerning the correctness of his or her pay, would ordinarily preclude a waiver, whether or not the employee fails to bring the matter to the attention of appropriate officials.
 - (f) GAO has consistently held that leave and earnings statements are distributed to Government employees in part so they may check for administrative error on the part of the Government. See, e.g., Arthur Weiner, B-184480, May 20, 1976.
 - (g) The employee who has been given the means to verify the correctness of his paychecks and has failed to do so, is not without fault in the matter.

- (h) Pertinent considerations in finding fault include but are not limited to the following.
 - 1 The payment resulted from an incorrect but not fraudulent statement that the employee should have known was incorrect.
 - 2 The payment resulted from the employee's failure to disclose material facts that he or she possessed and should have known to be material.
 - 3 The employee accepted a payment that he or she knew or should have known to be erroneous.
- (i) Examination of every case must be based on fact. For example, where an employee is promoted to a higher grade but the step level for the employee's new grade is miscalculated, it may be appropriate to conclude that there is no fault on the employee's part because employees are not typically expected to be aware of and understand the rules regarding determination of step level upon promotion. On the other hand, a different conclusion as to fault potentially may be reached if the employee in question is a personnel specialist or an attorney who concentrates on personnel law.
- (2) If the deciding official finds an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, the request for a waiver must be denied.
- (3) If the deciding official finds no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, the employee is **not** automatically entitled to a waiver.
- (4) Before a waiver can be granted, the deciding official must also determine that collection of the claim against an employee would be against equity and good conscience and not in the best interests of the United States.
- (5) Factors to consider include, but are not limited to the following.
 - (a) Collection of the claim would cause serious financial hardship, to the employee. See paragraph 9m for definition of hardship.
 - (b) Because of the erroneous payment, the employee either has relinquished a valuable right or changed positions for the worse, regardless of the employee's financial circumstances.

- [illegible]

- i. Suspension of Collection Action and Waiver of Interest and Penalty Charges and Administrative Costs. When a debtor requests a waiver of the debt, DOE will continue to accrue interest, penalties, and administrative costs during the period collection activity is suspended. Upon completion of the waiver process, interest, penalties, and administrative costs related to the portion of the debt found to be without merit will be waived. See *DOE Accounting Handbook*, Chapter 8.
15. EMPLOYEE DEBT THAT ARISES AS A RESULT OF AN INSPECTOR GENERAL INVESTIGATION. When an IG investigation finds that a claim exists against an employee, actions will proceed as follows.
- a. The Inspector General will in compliance with Privacy Act provisions provide a report and supporting documentation to the CFO or for field employees the field CFO or equivalent concurrent with notification to the appropriate management official. OIG documents may not be disclosed outside Department management without prior written approval of the OIG, including distribution to contractors. The report will include—
 - (1) name of employee subject of investigation and office affected,
 - (2) name of appropriate management official,
 - (3) brief description of the basis for the claim, and
 - (4) amount of claim.
 - b. The Appropriate Management Official, normally the head of a Departmental element or a designee, will review and provide a written response to the IG report. In addition, the management official will act as follows.
 - (1) Notify the employee in writing of the IG investigation findings pertaining to a claim against him or her.
 - (2) Refer a Headquarters employee to the Capital Accounting Center or field office employees to the appropriate finance office where he or she can arrange to repay any related claim.
 - (3) Contact the Capital Accounting Center or the appropriate field finance office immediately if the employee—
 - (a) challenges the existence or amount of a claim,
 - (b) attempts to make partial payment to settle the claim,
 - (c) requests installment payments, or
 - (d) is considered likely to respond in a way that makes involuntary repayment necessary.

- c. The CFO and field CFO or equivalents in addition to the responsibilities listed in paragraph 5b, will—
 - (1) establish a receivable based on IG investigation findings and obtaining sufficient documentation to support a claim and
 - (2) accept and deposit the employee's voluntary full and immediate repayment of the claim.

16. REFERENCES.

- a. Public Law (P.L.) 104-316, the General Accounting Office Act of 1996, set out in detail, the authority given to the Director of the Office of Management and Budget (OMB) and other heads of agencies to settle the accounts formerly subject to settlement by the Comptroller General. OMB's "Determination with Respect to Transfer of Functions Pursuant to Public Law 104-316," dated December 17, 1996, delegated the authority to waive collection of erroneous payments from civilian employees under 5 U.S.C. Section 5584 from the Director of OMB to the head of the Executive Branch agency that made the erroneous payment.
- b. P.L. 104-134, Debt Collection Improvement Act of 1996 (DCIA), centralized the government-wide collection of delinquent debt and gave the Department of the Treasury (Treasury) significant new responsibilities in this area. Treasury's FMS is responsible for Treasury's implementation of the debt collection provisions of the DCIA.
- c. P.L. 104-53, the Legislative Branch Appropriations Act of 1996, transferred certain authorities of the Comptroller General to settle claims and accounts to the OMB, and provided for the Director of OMB to delegate this authority to other appropriate agencies.
- d. P.L. 97-365, Debt Collection Act of 1982, which required increased efficiency of Government-wide efforts to collect debts and provides additional procedures for the collection of debts owed the United States.
- e. Title 5 United States Code (U.S.C.) Section 5584 prescribed the standards for waiver of claims for erroneous payment of pay and allowances, and of travel, transportation and relocation expenses and allowances, and grants the authorized official or agency head, as the case may be, the authority to waive collection of erroneous payments made to civilian employees and members of the armed services.
- f. Title 31 Code of Federal Regulations (CFR) 285.7, Salary Offset, issued by FMS, established procedures for the offset of Federal salary payments through the FMS administrative offset program to collect delinquent debts owed to the Federal Government.

- g. 31 CFR 900-904, Federal Claims Collection Standards, issued jointly by the Treasury and the Department of Justice (DOJ) under 31 U.S.C. 3711, prescribed standards for the administrative collection, compromise, termination of agency collection, and referral of debts to the Office of Personnel Management (OPM), or the DOJ for litigation of civil claims for money or property by the Federal Government.
- h. 10 CFR 1015, Collection of Claims Owed the United States, adopted for DOE the provisions of the Federal Claims Collection Standards, 31 CFR 900-904.
- i. 5 U.S.C. 5514, as amended, and 5 CFR 550.1101-1110, subpart K, authorized collection by installments, with proper notification, of amounts that an employee owes the United States Government after a determination is made by the head of a department or agency, or a designee, that a debt is valid and due.
- j. 31 U.S.C. 3711 and 3716 thru 3718 specified the standards for the collection of claims of the United States or any agency thereof.
- k. 5 CFR 178, Procedures for Settling Claims, prescribed general procedures applicable to claims against the United States that may be settled by the Director of the OPM. In general, these claims involve Federal employee's compensation and leave, and claims for proceeds of canceled checks.

17. DEFINITIONS.

- a. **Agency.** An executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation.
- b. **Administrative Costs.** Amounts assessed by DOE to cover the processing and handling delinquent debt due the Government.
- c. **Contingency Fees.** Administrative costs resulting from fees paid from amounts collected from a debtor for collection services rendered by Federal Agencies or private collection contractors.
- d. **Creditor Agency.** The agency to which a debt is owed (including a debt collection center) when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.
- e. **Current Pay Account.** Basic pay, special pay, incentive pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.
- f. **Debt.** An amount owed to the United States from sources that include loans insured or guaranteed by the United States; fees, leases, rents, royalties, services,

and sales of real or personal property; overpayments, penalties, damages, interest, fines, and forfeitures; and other similar sources.

- g. **Debt Collection Center.** The Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).
- h. **Delinquent Debt.** Unpaid moneys due by the date specified in DOE's initial written notification or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date. A debt is delinquent if the debtor fails to satisfy obligations under a payment agreement with the DOE.
- i. **Disposable Pay.** That part of current basic pay; special pay; incentive pay; retirement pay; retainer pay; or in the case of an employee not entitled to basic pay, other authorized pay remaining after deduction of any amount required by law to be withheld (e.g., deductions other than those required to execute garnishment orders in accordance with 5 CFR 581-582). Agencies must exclude deductions described in 5 CFR 581.105(b) through (f) to determine disposable pay subject to salary offset.
- j. **Employee.** An individual currently employed in a Federal Agency including a current member of the Armed Forces or a Reserve of the Armed Forces.
- k. **Head of Field Organization.** The head of an operations office, service center, site office, area office, or regional office of a federally staffed laboratory.
- l. **Interest Rate.** The Treasury Current Value of Funds Rate (CVFR) used to calculate interest on overdue Federal Government receivables [Treasury Financial Manual (TFM), I TFM 6-8040.40].
- m. **Other Administrative Offset Collections.** Amounts offset against payments due a former employee from lump-sum leave payment, severance pay, the Civil Service Retirement and Disability Fund, and the Federal Employee Retirement System under 31 U.S.C. 3716 and amounts offset under a preexisting statute which authorizes offset in particular situations but does not provide its own due process procedures.
- n. **Paying Agency.** The agency employing the individual and authorizing payment from his or her current pay account.
- o. **Penalties.** Assessments of not more than 6 percent per annum, in addition to interest, for failure to pay any portion of a debt more than 90 days past due [31 U.S.C. 3717(e)(2)].
- p. **Salary Offset.** A type of administrative cost or compensation set aside to balance the cost of a claim. As amended by section 31001(d)(2)(B) of the DCIA, 31 U.S.C. 3716, is applicable to the offset of all Federal payments even if another

statute provides for using offset to collect a particular type of debt [31 U.S.C. 3716(e)]. Thus, the provisions of 31 U.S.C. 3716 apply to salary offset even though procedures governing the offset of a Federal employee's salary are provided for in 5 U.S.C. 5514. The requirement to provide a Federal employee with notice and an opportunity to dispute the debt are contained in 5 U.S.C. 5514 and implementing regulations.

- q. **Waiver.** Cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.
18. **CONTACTS.** For questions or comments, contact the Office of Management, Budget and Evaluation/Chief Financial Officer at 301-903-4666.

BY ORDER OF THE SECRETARY OF ENERGY:

CLAY SELL
Deputy Secretary

DOE ELEMENTS TO WHICH DOE O 533.1X IS APPLICABLE

Office of the Secretary
Departmental Representative to the Defense Nuclear Facilities Safety Board
National Nuclear Security Administration
Office of Chief Financial Officer
Office of Chief Information Officer
Office of Civilian Radioactive Waste Management
Office of Congressional & Intergovernmental Affairs
Office of Counterintelligence
Office of Economic Impact and Diversity
Office of Electricity Delivery and Energy Reliability
Office of Energy Efficiency and Renewable Energy
Office of Environment, Safety, and Health
Office of Environmental Management
Office of Fossil Energy
Office of General Counsel
Office of Hearings and Appeals
Office of Human Capital Management
Office of Independent Oversight and Performance Assurance
Office of Inspector General
Office of Intelligence
Office of Legacy Management
Office of Management
Office of Nuclear Energy, Science, and Technology
Office of Policy and International Affairs
Office of Public Affairs
Office of Science
Office of Security and Safety Performance Assurance
Secretary of Energy Advisory Board
Bonneville Power Administration
Southeastern Power Administration
Southwestern Power Administration
Western Area Power Administration